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E. L. SORENSEN, JR.
Executive Director

October 14, 1999

Re: **Change in Ownership – Sale Back to Trustor by Trustee of QPRT**

Dear Mr. :

This letter is in response to your July 7, 1999 memorandum, requesting our opinion as to whether the sale of real property in a QPRT by the trustee back to the trustor would result in a change in ownership assuming consideration was paid. Please accept our apologies for the delay, due in part to circumstances beyond our control.

Based on your letter and the QPRT instruments described, the facts are as follows:

A QPRT is an inter vivos, irrevocable “qualified personal residence trust” in which the trustor (generally the parent) retains the present beneficial enjoyment of the home (whether a principal residence or vacation home) for a set period of years. At the end of the Trust term, the trust terminates and the trustee of the trust transfers title to the residence to the beneficiaries (generally children).

Until recently, the IRS permitted the trustor to repurchase the residence prior to the termination of the trust. The advantage of such repurchase is that the trustor who wishes to continue to live in the residence after the trust terminates does not have to pay rent to the beneficiaries since he/she is regarded as owning the residence in fee. Also, the IRS did not attribute any gain or loss on the sale because the trustor was at all times treated as the owner of the property in the trust.

Your question is whether such transfer from the QPRT back to the trustor for consideration prior to the termination of the trust would be a change in ownership. Specifically, does Revenue and Taxation Code Section 62(d) and Property Tax Rule 462.240 (a) exclude such a transfer from change in ownership, because the transferor is the trustee who holds only bare legal title and the trustor, as the present beneficial owner before and after the transfer, remains the same.

For the reasons hereinafter explained, the answer to your question is that the transfer of legal title to the residence back to the trustor, with or without consideration paid¹, prior to the termination of the QPRT would be excluded from change in ownership.

Law and Analysis

As you are aware Section 60 requires as a fundamental element of change in ownership that a *present beneficial* interest in real property has transferred. In a transaction where there is only a transfer of legal title to the property, no change in ownership has occurred. The statutory provisions regarding trusts reflect the conclusion reached by the Legislature in implementing Proposition 13, that a change in ownership occurs only upon a transfer of beneficial ownership of the property in a trust, and not on the transfer of legal title (Assembly Revenue and Taxation Committee, *Property Tax Assessment*, Volume I, October 29, 1979).² Thus, the change in ownership results mandated under Section 61(g) and (h), Section 62 (d) and Rule 462.160 are based on the concept that the trustee is never the beneficial owner of the trust property, even though he has legal title and the power to sell. (See Annotation No. 220.0761, Milam Letter 7/14/80, attached.) Similarly, Rule 462.240 (a) and (b) states that the transfer of bare legal title to property is not a change in ownership and that the transfer of legal title by a trustee to another trustee is not a change in ownership.

In *Allen v. Sutter County Board of Equalization* (1983) 139 Cal.App.2d 887, 890, the court held that no change in ownership resulted from an outright transfer of property by a trustee to the grandchildren of the trustor as they reached the designated age to receive distribution under an irrevocable trust. Since the grandchildren held the present beneficial ownership of the trust property from the creation of the trust, the trustee could only transfer bare legal title. This is similar to the transfers to and from a QPRT, described in Annotation No. 625.0208, Eisenlauer Letter 1/10/96, attached (referred to in your letter), except that the trustor retains present beneficial ownership of his/her residence for a set term of years before transferring it to the children, who then obtain beneficial ownership. In all of these transfers however, the trustee has the ability to transfer only legal title, and beneficial ownership was held either by the trustor (until the term ended and the QPRT terminated) or by the children who obtained beneficial ownership.

In the QPRT situation you describe, the trustor/parent has the present beneficial ownership of the residence and proposes to "purchase" legal title from the trustee before the term ends (and the trust terminates). In making this purchase, the trustor/parent will tender cash equal to the fair market value of the residence in exchange for the trustee's delivery of legal title. The result is that both legal title and beneficial title will "merge" in the trustor/parent, giving him/her

¹ Based on the internal provisions of the trust instrument, or on consent obtained from the children who will obtain beneficial ownership (per Probate Code Sections 15400-15414), or on the death of the transferor during the trust term, consideration may or may not be required.

² On page 19 of Volume I, this requirement is explained as follows:

"Beneficial use is necessary to protect custodianships, guardianships, trusteeships, security interests, and other fiduciary relationships from unintended change in ownership treatment. For example, a father buys land for his minor son, taking title as custodian for the son. There IS a change in ownership when the father buys the property; however, when the son reaches majority and gets the property outright there is no change in ownership. This is because the father never had the beneficial use of the property. The son was the real owners from the outset and when he reached majority there was no transfer of the beneficial use."

full fee ownership.³ After the transfer, the residence will no longer be held in the QPRT, and instead the cash paid for the residence will be retained by the trustee for future distribution to the beneficiaries when the trust term ends and the trust terminates. This transaction returns ownership to the trustor and eliminates any obligation to pay rent to the beneficiaries when the trust terminates. Since the trustee is transferring mere legal title, there is no change in ownership under Rule 462.240 (a). Further, since the trustor/parent currently has beneficial ownership, the merger of legal and beneficial title in the trustor/parent is excluded from change in ownership under Section 62(d).

Although the QPRT transfers discussed in the Eisenlauer letter are instructive, they dealt primarily with the transfer of beneficial ownership of the residence from the trustor to beneficiaries other than the trustor. Therefore, change in ownership consequences are dependent on who then acquires the present beneficial ownership of the property and whether an exclusion applies. Where relevant, however, the advice in the letter concerning the trustee's transfer of legal title is consistent with the foregoing discussion, in that it is not considered a change in ownership. For example, in transfer number 4, if parent dies prior to the end of the 10 year term, the trust terminates and the parent's residence is transferred back to the parent's estate to be distributed under the parent's will or other testamentary document. When the trustee deeds it to the deceased parent's estate, there is no change in ownership under Section 60 and Rule 462.240(a) because the trustee has transferred only bare legal title. On the date of death however, beneficial ownership transferred from the parent to the heirs or devisees, resulting in a change in ownership unless an exclusion, such as the interspousal or parent-child exclusion, applies.⁴

Regarding the issue of consideration, i.e., cash is paid to the trust in exchange for legal title to the residence, Rule 462.001 makes it clear that virtually any type of transfer results in a change in ownership when it includes the present beneficial use of the property. Rule 462.001, beginning with the second sentence states:

Every transfer of property qualified as a "change in ownership" shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement, or any other means. A change in the name of an owner of property not involving a change in the right to beneficial use is excluded from the term "transfer" as used in this section.

The change in ownership provisions governing transfers upon the creation or termination of trusts, follow this basic definition of "change in ownership." At issue in every transfer to or from trusts is whether the present beneficial ownership changed, not whether consideration was

³ A transfer resulting in the merger of legal title and beneficial ownership is a change in ownership unless the transfer is by a trustee back to the trustor under Section 62(d) or the remainder interest is vested in the transferor or the transferor's spouse. See Annotation No. 220.0373, Ochsner Letter 9/26/90 attached.

⁴ The other transfers involve the transfer of beneficial title. In transfer number 2, the outright transfer of the beneficial ownership of the residence to the children at the end of the 10 year term (and trust termination) is a change in ownership, unless a timely claim under Section 63.1 is filed and all requirements are met. In transfer number 3, the transfer of parent's residence at the end of the 10 year term (and trust termination) to a successor, irrevocable trust (for the sole benefit of the children) until the children reach a designated age, is a change in ownership, unless a timely claim under Section 63.1. In transfer number 5, if the parent sells the residence to the beneficiaries/children before the end of the 10 year term, there is a change in ownership, unless a timely claim under Section 63.1 is filed and all requirements are met.

paid. The Legislature has statutorily omitted the payment of consideration from the definition of change in ownership in Section 60 and placed it instead in Section 67 under the definition of the term "purchase."⁵ The "purchase" requirement is relevant to some exclusions from change in ownership, such as the transfer of base year value to a replacement dwelling "purchased" under the criteria set forth in Sections 69.5 or 69.3.

Consequently, the transfer of legal title to the residence from the trustee to the trustor with present beneficial ownership before the termination of the QPRT is not a change in ownership. The fact that the parent "purchases" it for valuable consideration does not alter this conclusion, since the parent had present beneficial ownership of the residence before and after the transfer.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/Kristine Cazadd

Kristine Cazadd
Senior Tax Counsel

Attachment: Annotation #220.0373
#220.0761
#625.0208

KEC:lg
property/precedent/coowners/99/17kec

cc:

Mr. Dick Johnson	MIC:63
Mr. David Gau	MIC:64
Mr. Charles Knudsen	MIC:62
Ms. Jennifer Willis	MIC:70

⁵ Section 67 states, "Purchased" or "purchase" means a change in ownership for consideration.